MICHIGAN SUPREME COURT

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EMINENT DOMAIN CASE TO BE HEARD BY SUPREME COURT NEXT WEEK

LANSING, MI, January 7, 2005 – A dispute over the value of property that the Michigan Department of Transportation (MDOT) used for a highway construction project will come before the Michigan Supreme Court next week for oral argument.

In *Michigan Department of Transportation v. Haggerty Corridor Partners Limited Partnership, et al.*, MDOT began an eminent domain proceeding in 1995 to take 51 of 335 acres of vacant land owned by Haggerty Corridor Partners Limited Partnership. At the time, the land was zoned for residential use; in 1998, the land was rezoned for commercial use, increasing its value. At trial, the jury heard evidence about the 1998 rezoning and its effect on the property's value; the jury ultimately returned a verdict of over $14 million for the landowners. At issue in this appeal is whether the trial judge erred by allowing evidence of the 1998 rezoning to be presented to the jury.

The Court will also hear *Studier, et al. v. Michigan Public School Employees' Retirement Board, et al.*, in which state public school retirees challenge increases in their health care plan deductibles and prescription copays. The plaintiffs argue that the changes have diminished their "accrued financial benefits" in violation of the Michigan Constitution. The plaintiffs also contend that the state is contractually bound to provide health benefits to them and that the increases violate that contractual obligation. Both the trial court and the Court of Appeals have rejected these arguments. The Supreme Court's ruling in this case could affect health care benefits for over 135,000 state public school retirees.

The Court will hear seven other cases, including disputes about parental rights, real property, trespass, and insurance issues.

Court will be held on **January 12 and 13.** Court will convene at **9:30 a.m.** each day.

(Please note: The summaries that follow are brief accounts of complicated cases and may not reflect the way in which some or all of the Court's seven Justices view the cases. The attorneys may also disagree about the facts, the issues, the procedural history, or the significance of their cases. Briefs in the cases are available on the Supreme Court's website at http://courts.michigan.gov/supremecourt/Clerk/msc_orals.htm. For further details about the cases, please contact the attorneys.)

Wednesday, January 12
Morning Session

MICHIGAN DEPARTMENT OF TRANSPORTATION v. HAGGERTY CORRIDOR PARTNERS LIMITED PARTNERSHIP, et al. (case no. 124765)
Attorney for plaintiff Michigan Department of Transportation: Raymond O. Howd/(517) 373-1479
Attorney for defendants Haggerty Corridor Partners Limited Partnership, Paul D. Yager, Trustee, a/k/a Paul D. Yeger, and Neil J. Sosin: Mary Massaron Ross/(313) 983-4801
Trial court: Oakland County Circuit Court
At issue: In a condemnation case, the jury is asked to determine the just compensation due to the property owner, based on the value of the highest and best use of the land at the time of the taking. Evidence that would tend to affect the property's market value as of the date of the taking is relevant, including the "reasonable possibility" of rezoning that would increase the land's value. May a jury consider evidence that the land actually was rezoned several years after the taking?
Background: MDOT began this eminent domain proceeding in 1995 to take 51 of 335 acres of vacant land owned by defendants Haggerty Corridor Partners Limited Partnership. The land was used for construction of the M-5 Haggerty Connector in Novi. At the time of the 1995 proceeding, the land was zoned for residential use. In 1998, the remainder of the vacant land the defendants owned was rezoned for commercial use. At trial, the jury was asked to determine the just compensation due to Haggerty Corridor Partners for the land taken by MDOT, based on that land's highest and best use in 1995. To answer this question, the jury needed to determine whether it was "reasonably possible" in 1995 that the land taken by MDOT would be rezoned for commercial use, which would increase its value. MDOT argued that such rezoning was not reasonably possible; Haggerty Corridor Partners argued that it was. The trial court admitted into evidence the fact that the remaining land was rezoned for commercial use in 1998. The jury awarded Haggerty Corridor Partners over $14 million. MDOT appealed. In a 2-1 decision, the Court of Appeals reversed and remanded for a new trial. The majority held that the trial court abused its discretion in admitting evidence of the 1998 rezoning and that the error was not harmless. Judge Christopher Murray, in dissent, would have affirmed the verdict. Because evidence of the 1998 rezoning was relevant, the trial court's ruling was not an abuse of discretion and any error was harmless, Murray stated. Haggerty Corridor Partners appeal.

STUDIER, et al. v. MICHIGAN PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD, et al. (case nos. 125765-6)
Attorney for plaintiffs Alberta Studier, Patricia M. Sanocki, Mary A. Nichols, Laviva M. Cabay, Mary L. Woodring, and Mildred E. Wedell: James A. White/(517) 349-7744
Attorney for defendants Michigan Public School Employees' Retirement Board, Michigan Public School Employees' Retirement System, Michigan Department of Management and Budget, and Treasurer of the State of Michigan: Tonatzin M. Alfaro Maiz/(517) 373-1162
Attorneys for amicus curiae Boards of Governors of Eastern Michigan University, Central Michigan University, Western Michigan University, Northern Michigan University, Ferris State University, and Michigan Technological University: Orin D. Brustad, Larry J. Saylor/(313) 496-7605, Robert G. Buydens/(313) 225-7013

Attorneys for amicus curiae County of St. Clair: Gary A. Fletcher, William L. Fealko/(810) 987-8444
Attorneys for amicus curiae Michigan Association of School Boards, Michigan School Business Officials, and Michigan Association of School Administrators: C. George Johnson, Roy H. Henley/(517) 484-8000
Attorneys for amicus curiae Michigan Municipal League and the Michigan Townships Association: Dennis B. DuBay, Richard W. Fanning, Jr., Barbara A. Rohrer/(313) 965-7610
Trial court: Ingham County Circuit Court
At issue: The plaintiffs, six public school retirees, are participants in the Michigan Public School Employees' Retirement System (MPSERS). They filed suit to challenge increases in their health care plan deductibles and prescription copays. The Supreme Court will consider several constitutional challenges related to this lawsuit: (1) Do the MPSERS plan amendments violate Const 1963, art 9, § 24, which protects "accrued financial benefits"? (2) Does the Public School Employees Retirement Act create a contractual right to health care benefits that is subject to Const 1963, art 1, § 10, and US Const, art I, § 10, which prohibit enactment of state law that impairs existing contractual obligations? (3) If so, do the plan amendments substantially impair existing contractual obligations?
Background: More than 135,000 MPSERS retirees receive health care benefits through the MPSERS Master Health Care Plan. The Michigan Public School Employees' Retirement Board amended the health care plan on January 21, 2000, modifying the prescription drug copayment requirement and also increasing the individual and family deductible. The plaintiffs argue that these changes are unconstitutional. Their first claim is that, in changing the deductible and copay, the board has diminished their "accrued financial benefits" in violation of Const 1963, art 9, § 24. The trial court disagreed, concluding that art 9, § 24's protection of "accrued financial benefits" did not encompass the health benefits at issue here. The plaintiffs' next claim is that Michigan's Public School Employees Retirement Act created a contract for certain health care benefits. The plaintiffs argue that, by changing the deductible and copay, the board has substantially impaired this existing contractual obligation in violation of Const 1963, art 1, § 10, and US Const, art I, § 10. The trial court dismissed this claim as well, finding that the deductible and copay increases did not impair the plaintiffs' contractual rights; in other words, the trial court found that the plaintiffs were still receiving the essence of their bargain. The Court of Appeals affirmed. Both the plaintiffs and the defendants appeal to the Supreme Court.

Afternoon Session

WARDA v. CITY COUNCIL OF THE CITY OF FLUSHING, et al. (case no. 125561)
Attorney for plaintiff Stephen W. Warda: Thomas W. Waun/(810) 695-6100
Attorney for defendants City Council of the City of Flushing and City of Flushing: Edward G. Henneke/(810) 733-2050
Trial court: Genesee County Circuit Court
At issue: Plaintiff Stephen W. Warda was a Flushing police officer who also did vehicle inspections for "salvage titles." He was charged with a criminal offense as a result of his inspection work. After his acquittal, Warda sought to recover his attorney fees from the city. The Flushing City Council denied his request, but both the circuit court and Court of Appeals have concluded that Warda is entitled to the payment of some of his attorney fees. Are the lower courts correct? Is the city council's decision subject to judicial review?

Background: Stephen Warda, a Flushing police officer, obtained special training from the Secretary of State that certified him to inspect "salvage vehicles." Several years later, Warda was charged with falsely completing two vehicle inspection reports in Macomb County, but was acquitted in June 1997. Warda then asked the Flushing City Council to pay $205,000 for the attorney fees that he incurred in defending these criminal charges, per MCL 691.1408(2). The city council denied Warda's request, concluding that the actions that caused Warda to incur the fees were not taken for any public purpose to benefit the city and were outside the scope of Warda's employment. Warda filed a lawsuit, arguing that the city abused its discretion in denying his request for attorney fees. Following a two-day bench trial, the trial court found that Warda was acting in the course of his duties as a Flushing police officer, that the city council did not "offer one credible or acceptable reason" for denying Warda's fee request, and that a reasonable attorney fee was $109,200. By a vote of 2-1, a Court of Appeals panel affirmed the trial court's ruling; Judge Kathleen Jansen dissented. The defendants appeal.

BLACKHAWK DEVELOPMENT CORPORATION, et al. v. VILLAGE OF DEXTER, et al. (case no. 126036)
Attorney for plaintiffs Blackhawk Development Corporation and Dexter Crossing, L.L.C.: Ronald E. Reynolds/(248) 851-3434
Attorney for defendants Village of Dexter and Dexter Development, L.L.C.: Allen J. Philbrick/(734) 761-9000
Trial court: Washtenaw County Circuit Court
At issue: Does a public roadway easement for "improving Dan Hoey Road" permit a developer to build access roads or otherwise improve the land subject to the easement in connection with a private commercial development?
Background: In 1990, the Village of Dexter concluded that Dan Hoey Road, an unimproved, gravel roadway, was unsafe. It obtained from a nearby property owner an easement, or right of way, "for the purposes of relocating, establishing, opening and improving Dan Hoey Road . . . ." Plaintiffs Blackhawk Development Corporation and Dexter Crossing, L.L.C., later purchased the strip of land subject to the easement. Dexter Development proposed improvements to the strip of land, which were approved by the Village of Dexter. These additional improvements included the construction of public access roads and underground utilities in connection with the construction of a private planned unit development known as Dexter Commerce Center. Blackhawk Development and Dexter Crossing objected; in June 2000, after construction of the Dexter Commerce Center began, Blackhawk Development and Dexter Crossing sued, asking for injunctive and declaratory relief, and damages for trespass. The trial court denied the plaintiffs' request for a preliminary injunction, and dismissed the lawsuit, ruling that the additional improvements fall within the scope of the easement and reasonably serve its purpose. The plaintiffs then appealed to the Court of Appeals, which affirmed the lower court in a 2-1 decision. Judge Michael Smolenski dissented, concluding that the changes made to Dan Hoey Road after its relocation were not "improvements" within the contemplation of the easement. The plaintiffs appeal.

JARRAD v. INTEGON NATIONAL INSURANCE COMPANY (case no. 126176)
Attorney for plaintiff Arthur T. Jarrad: L. Page Graves/(517) 394-7500
Attorney for defendant Integon National Insurance Company: Daniel S. Saylor/(313) 446-5520

Trial court: Ingham County Circuit Court
At issue: Plaintiff Arthur T. Jarrad held a no-fault policy with defendant Integon National Insurance Company. Pursuant to a collective bargaining agreement, Jarrad was also allowed to participate in the State of Michigan long-term disability (LTD) plan. After Jarrad had a disabling accident, he became eligible for both LTD and no-fault benefits. The LTD benefits were paid in full, but the defendant no-fault insurance company reduced Jarrad's no-fault benefit by the amount of the LTD benefits. Did the no-fault insurance company properly calculate the amount of Jarrad's no-fault benefit?
Background: Arthur T. Jarrad worked for the Michigan Department of Corrections as a corrections officer. As part of his collective bargaining agreement, he was entitled to participate in his employer's LTD plan. On June 27, 1999, Jarrad was involved in an accident. He began receiving $2,220.04 in monthly LTD benefits and was also entitled to receive no-fault benefits pursuant to his no-fault policy. Jarrad's no-fault insurer, Integon National Insurance Company, calculated that Jarrad would be entitled to $3,688.00 per month in no-fault work-loss benefits. Integon deducted from this amount the $2,220.24 monthly LTD benefit that Jarrad received. As a result, Jarrad received monthly payments of only $1,467.76 for the 36 months following the accident. Integon supported its decision by citing a provision of Michigan's no-fault statute, MCL 500.3109a, which states that "other health and accident coverage" is subject to coordination of benefits. Jarrad sued Integon. The trial court ruled in his favor, finding that MCL 500.3109a did not authorize Integon to set off, or deduct, the amount of the LTD benefit from the no-fault benefit that Jarrad would otherwise receive. In a 2-1 decision, a majority of the Court of Appeals panel affirmed, concluding that the benefits that Jarrad received through his employer's LTD plan did not amount to "other health and accident coverage" within the meaning of MCL 500.3109a. Judge Brian Zahra reached the opposite conclusion and dissented. Integon appeals.

ECHELON HOMES, L.L.C. v. CARTER LUMBER COMPANY (case nos. 125994-5)
Attorney for plaintiff Echelon Homes, L.L.C.: Timothy O. McMahon/(248) 414-9900
Attorney for defendant Carter Lumber Company: Paul M. Stoychoff/(248) 816-9410
Attorneys for amicus curiae Michigan Bankers Association: Jeffrey O. Birkhold, Matthew T. Nelson/(616) 752-2000
Trial court: Oakland County Circuit Court
At issue: Statutory conversion consists of buying, receiving, or aiding in the concealment of any property the defendant "knew" to be stolen, embezzled, or converted (MCL 600.2919a). In this case, the Court of Appeals interpreted the word "knew" to include a situation where the defendant's employees had information that would have led an honest person to make further inquiries, but did not do so. In other words, the appellate court held that constructive knowledge is sufficient to impose liability under the statute. Is the Court of Appeals interpretation correct?
Background: Plaintiff Echelon Homes, a residential building company, employed Carmella Wood as a secretary, administrative assistant, and bookkeeper. In July of 2000, Echelon discovered that Wood had engaged in a scheme to embezzle money and building materials from Echelon. The scheme included fraudulently obtaining credit accounts with several vendors, including defendant Carter Lumber Company, and then using those accounts for personal construction projects. Echelon fired Wood and reported her to the Michigan State Police. Echelon then discovered that numerous irregularities occurred in the course of Wood's use of the Carter account. Despite these irregularities, Carter did not contact Echelon to verify that the

account was being used properly. Echelon sued Carter, claiming in part that Carter converted Echelon's assets and property to its own use. The circuit court granted Carter's motion to dismiss Echelon's complaint, including the statutory-conversion claim, on the basis that Echelon had not produced any evidence to show that Carter had acted intentionally. The Court of Appeals reversed the summary dismissal of Echelon's statutory-conversion claim, reasoning that Carter had constructive knowledge of facts that would have led an honest person to make further inquiries, but that Carter avoided doing so. Carter appeals.

Thursday, January 13
Morning Session Only

PEOPLE v. GATSKI (case no. 125740)
Prosecuting attorney: Ronald J. Schafer/(616) 527-5302
Attorney for defendant Frank Gatski: Patrick M. Duff/(517) 647-4345
Trial court: Ionia County Circuit Court
At issue: The recreational trespass statute, MCL 324.73102, contains an exception for fishermen wading or floating a navigable stream. Frank Gatski was cited for recreational trespass when, while fishing, he disregarded a "no trespass" sign and stepped onto the grating of a dam owned and operated by Consumers Energy Company. Did the Court of Appeals properly interpret the statute? Does Consumers Energy have the right to limit a fisherman's access to parts of the dam "for the protection of life, health, and property"?
Background: Frank Gatski was fishing in the Grand River near the Webber Dam in Lyons Township on November 10, 2001, when he hooked a large fish. The fish swam into a gap between the grating and coffer of the dam and Gatski, in an attempt to guide the fish out of the gap, waded through the water past "no trespass" signs at the dam's grating and stepped onto the grating. A conservation officer was patrolling the dam, which is owned and operated by Consumers Energy Company, when he noticed Gatski standing on the grating. He cited Gatski for recreational trespass under MCL 324.73102(1). Gatski objected to the charge and argued in district court that his fishing activity and entry onto the grating was permissible under an exception to the recreational trespass statute. He also asserted that Consumers Energy had no right to restrict his right to use the stream or to regulate fishing at the dam. The district court ruled against Gatski, who appealed. The circuit court reversed and dismissed the trespass charge, but the Court of Appeals reversed the circuit court and remanded the case for further criminal proceedings. Gatski appeals.

CURTIS v. CITY OF DETROIT (case no. 125652)
Attorney for plaintiff Lawrence T. Curtis: Kim Corbin/(313) 886-4466
Attorney for defendant City of Detroit: Sheri L. Whyte/(313) 237-3076
Trial court: Wayne County Circuit Court
At issue: The city of Detroit identified a building for demolition, gave notice to the owner of record, and filed a notice lis pendens. The lis pendens expired and the building changed hands before it was demolished; a jury awarded the building's new owner damages for the demolition. Did the city of Detroit have a duty under MCL 125.540 or Detroit City Code 290-H, § 12-110-28, to notify the subsequent purchaser of the demolition order? Was the city required to renew its notice of lis pendens, MCL 600.2701, before going forward with the demolition? Is the city

governmentally immune from liability for this trespass? Was interest on the judgment properly calculated?

Background: On June 30, 1994, as part of its dangerous buildings program, the Detroit City Council ordered the demolition of a building at 9143 Mack in Detroit. Because the city of Detroit owned the building at that time, it sent the notice of demolition to its housing department. Moreover, a notice lis pendens of impending administrative action had been on file since June 7, 1994. The city then sold the building to Barbara Hoyle on August 29, 1994, who received notice of the demolition order. About four years later, Hoyle sold the property to plaintiff Lawrence T. Curtis; ten months after that, the city demolished the building. On October 3, 2000, Curtis sued the city for damages. In the trial court, Curtis argued that he did not receive actual notice of the demolition order and that he had no constructive notice because the lis pendens expired after three years by operation of law. The city responded that it had complied with all applicable notice requirements. The trial court ruled in Curtis' favor as a matter of law and, after a bench trial, awarded damages of $40,513.79. The Court of Appeals affirmed all except $2,000 of the judgment. The city of Detroit appeals.

In re B.M.B., G.P.B., Minors (case no. 127292)

Attorney for petitioner Michigan Family Independence Agency: Timothy K. Morris/(810) 985-2400

Attorney for respondent Lafraye Banks: Michael L. West/(810) 985-4321

Trial court: St. Clair County Circuit Court, Family Division

At issue: Was there legally sufficient evidence to support the trial court's order terminating Lafraye Banks' parental rights to her two children?

Background: On October 3, 2003, Lafraye Banks either dropped or threw her seven-month-old baby girl out of the second-floor bathroom window of her mother's house, seriously injuring the child. In the months following this incident, Banks received treatment for mental health problems. The Family Independence Agency (FIA) initiated court proceedings, concerned that Banks could not care properly for her two children. The family court explored Banks' mental illness and her response to treatment. The family court also heard testimony concerning the incident itself and Banks' parenting skills during the years before this incident. The family court referee concluded that the child's injury occurred as a result of Banks' then-existing mental health problems. He denied the FIA's petition to terminate Banks' parental rights because he could not conclude that there was a reasonable likelihood that Banks' children would suffer injury or abuse in the foreseeable future if they were returned to her care. The circuit court, however, set aside the referee's opinion and ordered that Banks' parental rights to both her children be terminated. The circuit judge found that Banks intentionally threw her youngest child out the bathroom window and that there was a reasonable likelihood that Banks' children would suffer injury or abuse in the future. He also concluded that there was no testimony at the trial that Banks' actions were the result of a mental illness. An order terminating Banks' parental rights to both of her children was entered November 6, 2003. Less than a year later, a unanimous Court of Appeals reversed, finding that the trial court's conclusions were not supported by clear and convincing evidence. The FIA appeals.

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